IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY & INTESTATE JURISDICTION

NOTIE OF MOTION NO. 56 OF 2005

IN

PETITION NO. 291 OF 1996

AVABAI BOMANJI WADIA & Ors. ... PETIIONERS/PLAINTIFFS

VERSUS

DR. RUSI D. VARIAVA & Ors. ...RESPONDENTS/DEFENDANTS

Mr. N.A. Shah with Mr. S.N.Shah i/b. M/s. Mulla & Mulla & Craigie Blunt & Caroe for the Petitioners/Plaintiffs.

Ms. Deepa Chavan i/b. M/s. Little & Co. for the Respondents/Defendants.

CORAM: S.K.SHAH,J.

DATE: 2nd May,2005.

P.C.

1. Heard learned Counsel on both sides.

2. This Notice of Motion is taken out by the Petitioners for appointment of Receiver in respect of

Flat No.61, Las Palmas, Little Gibbs Road, Mumbai 400 006.

3. It is a matter of fact that there is an order of injunction passed in Notice of Motion No.1202 of 1996 in Petition No.291 of 1996 against Mrs. Khorshed D. Variava, Dr. Rusi D.Variava and Mr. Firoze S.Rao. That injunction is still running.

4. The learned Counsel for the Respondents states that the Respondents have already filed an Appeal against the Judgment and order passed by this Court. She also makes a statement that Mrs.Khorshed D.Variava has expired on 14th April, 2005 and certain last rites are required to be performed in the said flat and the performance of the last rites would continue till 14th May, 2005. She also states that at present Dr. Variava has been in occupation along with other members of the family for the purpose of performing the last rites.

5. Under the circumstances, I do not find that it is necessary to consider the appointment of Receiver at this stage, particularly because the order of injunction is already in force against Rusi Variava and Firoze S.Rao. It is nobody’s case that except Khorshed anybody else was occupying the flat at the

time of death of the deceased. By way of injunction order which is in force, the rights of the Petitioners are very well protected. Moreover, the Appeal is already filed. If necessary, the parties can approach the Appeal Court. I do not pass any order on the Notice of Motion.

The Notice of Motion stands rejected.

6. A copy of this Order duly authenticated by the Associate of this Court be supplied to the parties.

(S.K.SHAH, J.)